



ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 14, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW- TW - A235  
Washington, DC 20554

Re: CC Docket No. 98-184 - GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable License

Dear Ms. Salas:

Attached are the Associations for Local Telecommunications Services comments in response to the Commission's Public Notice May 31, 2001.

Sincerely,

Kimberly M. Kirby  
Association for Local Telecommunications Services

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**JUN 14 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
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)  
GTE Corporation, Transferee, and Bell Atlantic )  
Corporation, Transferee, For Consent to )  
Transfer Control of Domestic and International )  
Sections 214 and 310 Authorizations and )  
Application to Transfer Control of a Submarine )  
Cable Landing License )

**CC Docket No. 98-184**

**COMMENTS OF THE ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES**

The Association For Local Telecommunications Services ("ALTS") submits these comments in response to the FCC's May 31, 2001 Public Notice ("Public Notice") DA 01-1325 asking for comments on Verizon's May 1, 2001 letter ("Verizon Letter"). In its letter, Verizon seeks to sidestep certain merger conditions set forth in the BA/GTE Merger Order.<sup>1</sup>

Specifically, Verizon seeks relief from Merger Condition 11c which requires Verizon to maintain its separate advanced services affiliate for 9 months after a "final and non-appealable judicial decision...determines that the separate Advanced Services affiliate must be deemed a successor or assign of the incumbent LEC for purposes of 47 U.S.C. §§ 153(4) or 251(h)."<sup>2</sup> ALTS opposes any modification of the merger

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<sup>1</sup> *In re Applications of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, App. D, Condition 11c (2000) (BA/GTE Merger Order).

<sup>2</sup> *Id.*

conditions. In addition, ALTS requests that the Commission impose strict penalties for non-compliance of any merger conditions and enforce those actions immediately.

## **INTRODUCTION AND SUMMARY**

### ***Enforcement***

Verizon seeks to sidestep another Commission order by asking the Commission to “accelerate” the time frame of the DC Circuit’s January 9, 2001, decision in *ASCENT v. FCC*. The separate data affiliate requirement automatically terminates no later than 9 months from that decision – on October 9, 2001. Verizon claims that it is necessary to immediately lift the restrictions because Verizon will otherwise be harmed economically.

ALTS encourages the Commission to see beyond the simple, and wholly self-serving arguments put forth by Verizon and do what the Commission has the authority to do – enforce the merger conditions. ALTS urges the Commission to send a clear message to the industry that the Commission will enforce all commission orders without exception and ALTS urges the Commission to take swift action immediately upon notice that any order has been violated.

### ***Verizon’s Economic Hardship***

Verizon claims that unless the merger condition for a separate data subsidiary is lifted, Verizon will fall victim to economic hardship. Verizon claims that elimination of the “structural separation” requirement will allow Verizon to bring more services to more consumers quickly and economically. Verizon also claims that it is unfairly prohibited from competing with CLECs for business customers who want a single point of contact for voice and data services.

However, a recent presentation by co-CEO and President, Charles R. Lee, dated June 11, 2001, shows that the opposite is true. Mr. Lee boasts that Verizon has obtained

720 thousand DSL subscribers as of March, 2001, and expects to convert 1.2 to 1.3 million DSL subscribers by the end of 2001. In fact, it appears that Verizon's strategy to offer advanced services is tied to Verizon's goal of ensuring that 85% of access lines are "LD Approved" by the end of 2001. This strategy is consistent with Verizon's claim that it must be able to offer customers a single point of contact for all their voice and data needs.

Finally, Verizon brags that it has seen a 27.6% data growth in one year from the first quarter 2000 to the first quarter 2001. All of this recent data seems to point to a very healthy advanced services market for Verizon and also reveals the somewhat greedy motivation behind lifting the separate data sub six months early.

#### *Separate Subsidiary Compliance*

Verizon states that its advanced services operation would continue to use the same standard wholesale interfaces, processes and procedures that are available to other CLECs and that the merger conditions already specify the requirements that apply. However, recent information, including an audit report filed with the FCC on June 1, 2001, shows that Genuity (the Internet and related assets of GTE Internetworking, Inc.) has been receiving special treatment by Verizon whereas other CLECs in Verizon's territory are unable to resolve simple issues such as proper billing.

Given the uncertainty of Verizon's compliance with the merger conditions, Verizon's increasingly healthy economic status, and the harm that will certainly result if Verizon is allowed a free pass on its merger obligations, ALTS urges the Commission to deny Verizon's request.

## I. ENFORCEMENT

In the BA/GTE Merger Order, the Commission found that:

[A]bsent conditions, the merger of Bell Atlantic and GTE will harm consumers of telecommunications services by (a) denying them the benefits of future probable competition between the merging firms; (b) undermining the ability of regulators and competitors to implement the pro-competitive, deregulatory framework for local telecommunications that was adopted by Congress in the 1996 Act; and (c) increasing the merged entity's incentives and ability to discriminate against entrants into the local markets of the merging firms.<sup>3</sup>

Thus it is clear from the Commissions own language that merger conditions are an absolute requirement in order to foster a competitive market and avoid obfuscating the intent of Congress. The Commission goes on to state that:

The Applicants...have proposed conditions that will alter the public interest balance. These conditions are designed to mitigate the potential public interest harms of the Applicants' transaction, enhance competition in the local exchange and exchange access markets in which Bell Atlantic or GTE is the incumbent local exchange carrier (incumbent LEC), and strengthen the merged firm's incentives to expand competition outside of its territories. We believe that the voluntary merger conditions proposed by the Applicants and adopted in this Order will not only substantially mitigate the potential public interest harms of the merger, but also provide public interest benefits that extend beyond those resulting from the proposed transaction. Accordingly, we conclude that approval...serves the public interest...given these significant and enforceable conditions.<sup>4</sup>

Here the Commission states very clearly that merger conditions are significant to the emerging competitive local markets and are enforceable. Any proof of non-compliance, or any move by Verizon to side-step the conditions, would, by the Commission's own words, *not* be in the public interest, *not* enhance competition in the local exchange and exchange access markets of the incumbent Verizon, and *not* strengthen Verizon's incentive to expand competition outside its territories.

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<sup>3</sup> *Id.* at ¶ 3.

Where there is blatant evidence of ILEC non-compliance with any Commission order, the Commission should act on its own authority immediately. Here, where an ILEC asks for a “Mother may I” way out of an obligation, the Commission should render an immediate and unqualified decision denying the request for regulatory relief. Where there is obvious non-compliance, ALTS encourages the Commission to act swiftly in the form of penalties or suspension of operations until the Commission investigates the misdeed.

In this instance, Verizon seeks relief from future obligations and flatly assumes that the Commission will not impose any other separate affiliate conditions once the October deadline is reached. The Commission should examine whether Verizon is meeting existing obligations and also determine whether additional measures should be implemented to protect the public interest and the competitive market. Thus ALTS encourages the Commission to investigate the merger conditions specific to separate affiliate transactions and ensure that all requirements are being met, regardless of any deadlines or sunset provisions of regulatory obligations. The separate affiliate rules continue to have a competitive effect on the industry. Non-compliance with any rules should be resolved expeditiously – by the Commission.

Moreover, the burden of ILEC non-compliance should not shift to the CLECs in the form of filing complaints, or participating in rounds of comments. While CLECs appreciate the opportunity to be heard, there are certain circumstances, as in this one, where the Commission should act on its own authority and enforce the rules already in place.

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<sup>4</sup> *Id.* at ¶ 4.

Furthermore, in no event, should Verizon be allowed to use the process of transferring assets or responsibilities from its advanced services affiliate to the parent as a vehicle to hamper competitive entry. ALTS urges the Commission to closely monitor Verizon and ensure that Verizon does not slow-roll wholesale provisioning. There should be swift and meaningful penalties if there is any degradation in wholesale provisioning intervals or service quality.

## **II. VERIZON FACES NO ECONOMIC HARDSHIP AND SHOULD BE FORCED TO COMPLY WITH THE MERGER CONDITIONS**

Verizon claims in its May 1<sup>st</sup> Letter that it has faced, and will continue to face, among other things, certain economic hardships if the Commission does not allow Verizon to avoid merger condition 11c.<sup>5</sup> This is simply not true. Unless Verizon's economic situation changed drastically from the filing of Verizon's letter on May 1<sup>st</sup>, 2001, to June 11, 2001, evidence provided by Verizon Chairman and co-CEO, Charles R. Lee, proves that Verizon is a telecommunications industry leader in both the voice and data markets.<sup>6</sup>

In Mr. Lee's presentation entitled "The Communications Food Chain" Verizon has seen a twenty-seven percent (27%) growth in its data revenues from \$1.333 million in 1Q 2000 to \$1.701 million in 1Q 2001.<sup>7</sup> Verizon DSL subscribers have grown from 150,000 in March 2000, to 720,000 in March 2001. Mr. Lee's "target" goal for DSL subscribers is 1.2 to 1.3 million by the end of 2001.<sup>8</sup> And that's not all.

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<sup>5</sup> See Letter filed May 1, 2001, by Gordon R. Evans, Vice President, Federal Regulatory of Verizon, to Ms. Dorothy Attwood, Chief, Common Carrier Bureau, dated April 26, 2001, at p. 3 (*Verizon Letter*).

<sup>6</sup> See Presentation by Chairman and co-CEO Charles R. Lee presented at the CIBC World Markets Annual Investor Conference June 11, 2001 at <http://investor.verizon.com> (*Verizon Presentation*).

<sup>7</sup> *Id.* at slide no.22.

<sup>8</sup> *Id.* at slide no.17.

Verizon is also targeting 85% of access lines “LD Approved” by the end of 2001.<sup>9</sup>

In fact, it appears that Verizon’s strategy to offer advanced services is tied to Verizon’s goal of ensuring that 85% of access lines are “LD Approved” by the end of 2001. This strategy is consistent with Verizon’s claim that it must be able to offer customers a single point of contact for all their voice and data needs.<sup>10</sup>

At the same time that Verizon boasts about its healthy coffers Verizon is also stealthily pushing competitors out of the market. In the Verizon states of Virginia, Maryland, and Pennsylvania, for example, one CLEC reports that Verizon bills are so grossly inadequate that the CLEC cannot reconcile the quantity of loops installed and removed. Duplicate bills have been found both in Verizon’s “Legacy” system and “Express Trac” system. Recurring and non-recurring charges for loops cannot be verified and the bills are inaccurate because Verizon bills reflect incorrect zone density cells.

Furthermore, Verizon is not applying the correct discounted rates for residential unbundled loops per the GTE/Bell Atlantic Merger Conditions. And, although Verizon has acknowledged this latest billing “glitch,” Verizon will not correct the bills until October 2001 (the same time that Verizon will be relieved from the separate data subsidiary condition). With respect to DSL de-conditioning, Verizon charges for bridge tap and load coil removal at rates that have not been set by the state commission. Verizon continues to charge for redundant collocation power when no CLEC equipment has been installed and there appears to be no resolution in sight.

On local reciprocal compensation bills, Verizon automatically reduces the quantity of minutes by 20% even where the CLEC does not terminate calls to ISPs. For

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<sup>9</sup> *Id.* at slide no 20.

<sup>10</sup> Verizon Letter at p. 2,3.



toll reciprocal compensation, Verizon refuses to pay CLECs. For Interconnection trunks, Verizon disputes the bills and refuses to pay the contracted amount. All of these issues have amounted to a deficit – for one CLEC – in the amount close to seven million dollars (\$7,000,000).

Add to this figure the \$1.0 million dollars plus per year necessary to fight the legal and regulatory battles and the title of Mr. Lee's presentation becomes clear: the food chain of telecommunications has Verizon at the top eating its way through the local and long distance telecommunications market until it chomps down on its final victims – the CLECs at the bottom. Contrary to Verizon's plea for help, the CLECs are the ones with economic hardship. The only way to alleviate the strain on resources and ensure continued growth for CLECs is for the Commission to step in and take action.

The last slide of Mr. Lee's presentation is entitled "VZ Investment Thesis" and boasts "outstanding expense controls", "steady earnings and cash generation", and "premier assets". Thus it is difficult to reconcile this stellar report on Verizon's healthy assets and business plan with the economic hardship claimed in Verizon's May 1<sup>st</sup> Letter. Either Mr. Lee is misinformed, or, Verizon seeks to misinform the Commission in hopes of receiving regulatory relief. Either way, ALTS urges the Commission to deny Verizon's request.

### **III. MERGER CONDITION NON-COMPLIANCE**

In paragraph two of the GTE/Bell Atlantic Merger Order the Commission stated that the spin-off of GTE's Internet backbone and related assets into a separate public corporation ("Genuity") requires Verizon to adhere to the following:

- (1) Verizon will not own an equity interest or the equivalent of more than 10 percent of Genuity;
- (2) Verizon will not control Genuity;
- (3) Verizon will not provide interLATA services through Genuity.<sup>11</sup>

These are the merger conditions that Verizon agreed to, and the commission established, in CC Docket No. 98-184. Yet, according to the Independent Accountant's Report of Management on Compliance with the Genuity Conditions, filed with the FCC June 1, 2001, Verizon was found to be in material non-compliance with the Genuity Conditions. Specifically, Verizon submitted bills to Genuity 45 to 150 days after the services were rendered. Compare this practice to that in Pennsylvania where Verizon charges CLECs for collocation power before the CLEC collocation equipment is activated. Moreover, the Genuity billing inconsistencies were not reported to the FCC in the 2000 Annual Compliance Order submitted to the FCC on March 15, 2001.

Verizon also thwarted the Independent Accountant's Report by failing to provide information on the following:

- ▶ Incentive compensation for Genuity managers tied to the performance of Genuity and the value of Genuity's publicly traded stock rather than to the financial performance or stock value of Verizon.
- ▶ Election process and conduct of the Board of Directors for Genuity in accordance with the Merger Order.
- ▶ Proof of commercial interactions pursuant to commercially reasonable contracts where Genuity provides services to Verizon.

In the instances above, Genuity management did not provide written acknowledgment of responsibility for compliance with these requirements. In addition, Verizon failed to

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<sup>11</sup> See Appendix B in the BA/GTE Merger Order.

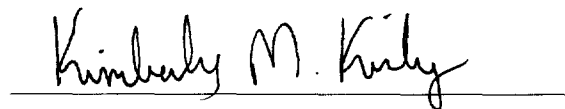
provide the FCC with 54 agreements detailing the relationship between Genuity and Verizon. Not only are the circumstances above a clear violation of the GTE/Bell Atlantic merger conditions, it is also evidence that Genuity is not being treated as a separate entity but rather as an arm of Verizon.

With these actions, it is difficult for the CLEC community to be assured that Verizon will comply with any separate affiliate conditions – per merger order or section 271 order. ALTS encourages the Commission to investigate thoroughly compliance with the merger conditions and impose penalties where, as here, there is clear evidence of non-compliance. Laws without enforcement amount to no laws at all and undermine the work the Commission has devoted to competition. Also, it is important to note that in addition to expending funds on local facilities, CLECs have dedicated equal amounts of time and resources to fighting legal and regulatory battles. CLECs cannot sustain the constant “one-two punch” on the competitive front and urge the Commission to take swift action.

### CONCLUSION

ALTS respectfully urges the Commission to deny Verizon’s request for relief of the Merger Conditions. ALTS also asks the Commission to take swift action on Verizon’s non-compliance with the BA/GTE Merger Conditions as evidenced by the June 1, 2001 Independent Accountant’s Report.

Respectfully submitted,

A handwritten signature in black ink, reading "Kimberly M. Kirby", is written over a horizontal line.

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Jonathan Askin

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